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January 9, 2023

#### Via ECF

Honorable Brian M. Cogan United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

## MOTION FOR REMAND AND COSTS

Re: BOUROUIS v. NATIONAL RAILROAD CORP., NATIONAL RAILROAD

**PASSENGER CORPORATION and JOSE GONZALEZ** 

Docket No. 1:22-cv-07661-BMC

Dear Hon. Brian M. Cogan:

Plaintiff, Said Bourouis ("Bourouis"), by his Attorneys Newman, Anzalone & Newman, LLP., submit this letter motion seeking remand of this action to New York State Supreme Court, Queens County.

The action arises out of a motor vehicle accident on May 29, 2021. Plaintiff, Bourouis, was driving near the intersection of Fresh Pond Road and Metropolitan Avenue in Queens, New York, when he was struck by a vehicle operated by Jose Gonzalez and owned by National Railroad Corp.

The New York City Police Accident report documents that the operator of vehicle 1 defendant, Jose Gonzalez, stated "he was attempting to stop at location but slid due to the rain and wet pavement causing him to strike vehicle 2". Gonzalez's residence is reported to be Queens County, NY. A copy of the New York City Police Accident report is attached.

Bourouis initiated this action in New York Supreme Court, Queens County. Venue was based on plaintiff's residence in Queens County, NY.

Plaintiff's complaint alleges that the defendant operated his motor vehicle in a dangerous and careless manner and seeks recovery for non-economic loss as set forth in section 5102(a) of the New York Insurance Law.

On December 16, 2022 defendants removed the action to the United States District Court Eastern District of New York based on federal question jurisdiction.

#### I. REMAND

Federal jurisdiction is available only when a federal guestion is presented, 28 U.S.C. § 1331, or when the plaintiff and defendant are of diverse citizenship and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. A case may be removed from state court to federal court only if it could have originally been commenced in federal court on either the basis of federal question or diversity jurisdiction. Citibank, N.A. v. Swiatkoski, 395 F.Supp.2d 5, 8 (E.D.N.Y.2005) (citing 28 U.S.C. § 1441(a)). In making this determination, courts are permitted to look to materials outside the pleadings, "includ[ing] documents appended to a notice of removal or a motion to remand that convey information essential to the court's jurisdictional analysis." Romano v. Kazacos, 609 F.3d 512, 520 (2d Cir.2010). Federal question jurisdiction exists when the plaintiff raises claims under federal law. Removal is "strictly construed" and the removing party bears the burden of establishing removal is proper. If a federal court determines that it lacks subject matter jurisdiction over the removed case, the case must be remanded. 28 U.S.C. § 1447(c). Removal statutes are to be strictly construed, and any doubts are to be resolved in favor of remand. See Beatie & Osborn LLP v. Patriot Scientific Corp., 431 F.Supp.2d 367, 38283 (S.D.N.Y.2006); Codapro Corp. v. Wilson, 997 F.Supp. 322, 324-25 (E.D.N.Y.1998). The burden of showing the proper exercise of jurisdiction by the removal court rests with the party seeking removal. See Cal. Pub. Emps. Ret. Sys. v. WorldCom, Inc., 368 F.3d 86, 100 (2d Cir.2004); Grimo v. Blue Cross/Blue Shield of Vt., 34 F.3d 148, 151 (2d Cir.1994). Schulman v MyWebGrocer, Inc., 14-CV-7252 ENV RML, 2015 WL 3447224, at \*1 [EDNY May 28, 2015]

A copy of the plaintiff's complaint is annexed to defendants' removal. The complaint does not raise claims under federal law and plaintiff respectfully requests that this matter be remanded to State Court.

### II. COST, EXPENSES AND FEES

Bourouis requests costs and actual expenses, including attorney's fees pursuant to 28 U.S.C. § 1447(c), which provides "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." See Certain Underwriters at Lloyd's London v. Art Crating, Inc., No 12–CV–5078, 2014 WL 123488, at \*2 (E.D.N.Y. Jan.10, 2014). A determination of whether an award of attorney's fees is warranted turns on whether or not a defendant had an "objectively reasonable basis" for the subject removal. Martin v. Franklin Capital Corp., 546 U.S. 132,136, 141 (2005). Schulman v MyWebGrocer, Inc., 14-CV-7252 ENV RML, 2015 WL 3447224, at \*3 [EDNY May 28, 2015]

Here, Defendants have not set forth the basis for removal and have no objective reasonable basis for removal.

Respectfully submitted,

Newman, Anzalone & Newman, LLP. By: Gregory S. Newman, Esq. (GN4547)

Via ECF Charles W. Mondora, Esq. Landman Corsi Ballaine & Ford P.C.

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